

## **REMARKS**

Claims 1-24 were pending in the application. By this paper, claims 1-24 remain pending and claims 1, 12, 15, 17, and 19 have been amended herein. Claims 3, 6, 10, 22, and 23 currently stand withdrawn. Reconsideration and withdrawal of the objections and rejections are respectfully solicited in view of the foregoing amendments and the following remarks.

### **Election/Restriction**

The application was subject to a four way species election requirement where four separate species were identified including Species I-IV. The applicants hereby affirm, *without traverse*, the election of Species II including Figures 6-8. The applicants also confirm that claims 1, 2, 4, 5, 7-9, 11-21, and 24 read on elected Species II. The applicants further confirm that claims 6 and 10 do not read on Species II and therefore are properly withdrawn.

However, claims 3, 22, and 23, noted in the action as also being withdrawn, do in fact read on elected Species II. Particularly, claim 3 recites that the openings in the upper panel are positioned directly vertically over a corresponding one of the tool handle receptacles in the base panel. Species II embodies both a condition where the underlying receptacles are directly beneath corresponding ones of the openings in the upper panel and where the underlying receptacles are generally beneath, but horizontally offset from, the respective openings in the upper panel. Thus, claim 3 reads on Species II and should not be withdrawn.

Claims 22 and 23 depend from different base claims, but each recites that the size and shape of the base panel is essentially identical to that of the upper panel. Again, Species II is not limited to whether the base and upper panels are the same size and shape or are of different configuration. Thus, claims 22 and 23 also read on the elected Species II and should not be withdrawn.

Removal of the withdrawn status of claims 3, 22, and 23 is respectfully solicited. If a generic claim is allowed that covers the limitations recited in claims 6 and 10, reinstatement of these claims will be requested at the appropriate time.

## **Drawing Objections**

A number of drawing objections were raised in the action. Each of these is addressed separately below.

Figure 3 has been objected to for containing reference numerals 30 and 26, which are used to identify the front end and the perimeter, respectively, of the bottom panel 12. The applicants believe that Figure 3 is correct. Figure 3 shows a top view of the *entire assembled rack*, wherein the forward end 44 of the base panel 12 projects further forward than the upper panel 14. Thus, the front end of the base panel 12 can be seen forward of the front end of the upper panel. The perimeter 26 and front end 30 are believed to be properly identified. This particular objection should be withdrawn in view of the foregoing.

Figures 1 and 2 have been objected to for failing to show the reference G and the reference 44. These reference identifiers have been added to Figs. 1 and 2 as requested. This particular objection is believed to be overcome.

Figure 4 has been objected to for failing to show reference numbers 46, 48, and 18. These elements refer specifically to the tools 18, their handles 46, and the distal ends 48 of the handles. The tools and handles are not shown in Figure 4. However, the reference numbers 46 and 48 have been added to Figures 1, 5, and 7, and the reference number 18 lead line has been corrected to be in phantom or dashed line in Figure 1. These particular objections are believed to be overcome.

Figures 1-3 have been objected to for failing to show the reference number 52. The reference 52 refers to the bottom surface of the upper panel, which is not visible in Figs. 1-3. However, the reference number 52 has been added using an arrow in Figs. 1 and 2 to indicate the bottom surface of the upper panel. It has not been added to Figure 3 since that figure only shows a top view of the upper panel. This objection is believed to be overcome.

Figure 5 has been objected to for failing to show the reference numbers 46, 38, and 80. These reference numbers have been added to Figure 5 in order to overcome this objection.

Lastly, the reference numbers 76 and 78 are indicated as not being shown in any of the drawing figures. However, these reference numbers do appear in original Figures 3 and 4. The original reference numbers are circled in the proposed corrected drawings submitted herewith. The elements 76 and 78 have also been added to Figures 1-3 and 6 to further

illuminate the location of the open pockets and ribs that can be used reduce material and add strength to the panels. This drawing objection is also believed to be overcome.

Withdrawal of the drawing objections is respectfully requested in view of the foregoing comments and the attached proposed corrected drawings. Formal versions of these drawing corrections will be submitted upon allowance of the application, or earlier if requested.

### **Specification Objections**

Page 7, line 18, of the specification has been objected to for incorrectly identifying the figure showing reference numeral 70. To address this objection, the reference numeral 70 has been added to Figure 2. Also, the specification has been amended to identify both Figures 2 and 3, which show this element of the upper panel. This objection is believed to be overcome.

The specification has also been objected to for inconsistent use of the reference numeral 144. The specification at page 10, lines 2, 7, and 10, has been amended to clearly and correctly identify and describe the surface 144. The blind end surface 144 of the receptacles in the base panel 12 are angled or tapered. These terms were used interchangeably. The terminology in the specification as amended is believed to be consistent, clear, and reflect the intended meaning.

The specification objections are believed to be overcome and withdrawal of same is respectfully requested.

### **Claim Rejections - 35 U.S.C. §112**

Claims 1, 2, 4, 5, 7-9, 11-21, and 24 have been rejected under 35 U.S.C. §112, second paragraph, as indefinite. Particularly, claims 1, 17, and 18 have been rejected for failure to recite specific structure or a particular arrangement with which to accomplish the claimed function of counteracting a tipping moment, as in claims 1 and 17, or to cause the tools to lean toward a back corner of the base panel in claim 18.

The specification discloses a number of particular constructions and arrangements of either the panels, the openings, and/or receptacles in the upper and lower panels, respectively. Specifically, the specification describes horizontally offsetting the openings and their corresponding receptacles, and/or using closed end, angled receptacle surfaces to tilt stored tools in a desired orientation to counteract a tipping moment in the device. The specification

also describes adding an extension to the bottom panel beyond the receptacles as an option for counteracting a tipping moment in the device. Any one or more of these features is described as being capable of accomplishing the claimed function of counteracting the tipping moment on the storage device, whether alone or in combination with the other features. The claims are drafted broadly to cover any and all of the disclosed structures in the specification that perform the claimed function, as permitted by 35 U.S.C. §112. MPEP §2100, and particularly §2181, for example, clearly permits use of functional language in a claim. The functional language in claims 1, 17, and 18, for example, is believed to be adequately clear and the written description provides a number of specifically delineated structures in sufficient detail that are said to perform the recited function.

Reconsideration and withdrawal of the rejection under §112 are respectfully solicited in view of the foregoing comments. Further, this rejection is believed to be overcome in view of the claim amendments and further arguments presented herein.

#### **Claim Rejections - 35 U.S.C. §102**

Claims 1, 2, 4, 5, 7-9, and 11 have been rejected under 35 U.S.C. §102(b) as anticipated by Humphries et al., U.S. Patent No. 2,835,503 (Humphries). Humphries discloses a garden tool cart wherein a lower plate 54 is supported above a ground surface by a pair of wheels 28 and a pair of support legs 20. Thus, the lower plate 54 is not resting on a ground surface. Instead, the Humphries lower plate rests only on the wheels and the tips 22 of the legs 20 and is elevated above the ground surface.

In contrast, claim 1 has been amended to recite that the base panel has a bottom side arranged so that the base panel rests on a ground surface. At least this limitation is neither taught nor suggested by Humphries. Also, Humphries does not teach or suggest any structure to counteract a tipping moment, nor does it even mention such forces created by tools stored in its cart. As a result, Humphries does not anticipate or render obvious claim 1 or its corresponding dependent claims 2, 4, 5, 7-9, and 11. The anticipation rejection based on Humphries should be withdrawn.

Claims 1, 2, 4, 5, 7-9, 13, 14, 17, 18, 20, and 21 have been rejected under 35 U.S.C. §102(e) as anticipated by Hurt, U.S. Patent No. 6,460,709 (Hurt). Hurt discloses storage device for use in corners that must be mounted to a wall surface. The Hurt device is not a free standing device. The first and second sides 12 and 14 of each of the triangular shaped storage devices disclosed in Hurt have a plurality of slots 60 sized to receive fasteners to

removably and horizontally attach the storage devices 10 to adjacent wall surfaces. At col. 3, lines 38-47, Hurt specifically discloses that the slots 60 may be formed as holes or other apertures, so long as fasteners can be received therein to attach the storage devices 10. Thus, there is no tipping moment to be dealt with Hurt because the devices 10 must be attached to a wall.

At col. 3, line 53 - col. 4, line 9, Hurt teaches that a multi-tiered stack of its devices 10 can be joined by posts received in corner bores 72. Based on the size of the storage chambers 52 in the devices 10, Hurt will not control the arrangement of tools supported therein. If two or more of the storage devices were utilized for storing long handle tools in a corner, no provision is taught or suggested by Hurt to counteract a tipping moment caused by such tools. Thus, the devices must be attached to a wall as taught by Hurt to retain the device in position and to prevent the stacked or tiered devices from tipping over if improperly loaded, such as with long handled tools. However, Hurt does not even identify, address, or otherwise mention any problem associated with tipping moments or tipping over of its storage devices. This is because the device will not tip over because it must be secured to a wall surface. Hurt also specifically claims that the first and second sides of the device be adapted to receive fasteners to removably and horizontally attach the frame of the storage device to adjacent wall surfaces. This specific teaching can not be ignored.

The action also notes that elements 68 in Hurt are said to be moment negating portions to counteract a tipping moment of the storage device. This is incorrect. Hurt, at column 3, lines 49-53, clearly notes that the elements 68 are protrusions extending outwardly from the third side or front side 16 of the storage device. The protrusions are "preferably directed upward, *such that various items maybe hung or grasped thereon for additional storage purposes.*" If items are hung from the elements 68 of the storage device 10, the mass of these items would actually add significantly to any moment forces exerted on the storage device. The protrusions 68 are outward of the perimeter of the storage device 10. Any items hung therefrom would be positioned further from the center of gravity of the storage device 10 and thus create an additional tipping moment, not negate any tipping moment. Hurt makes no mention of the protrusions 68 as performing any tipping moment negating function. The only reason the Hurt devices 10 would not tip over is because they must be attached to a wall.

In contrast, independent claims 1 and 17 each specifically recite that the base panel of the storage device rests on a ground surface and that the upper panel is *solely* supported by

the risers, not by any other means such as being attached to a wall. Claims 1 and 17 also recite that any one or more of the openings, receptacles and/or panels is constructed and arranged to counteract a tipping moment on the storage device created by inverted long handled tools stored in the device. Hurt fails to teach or suggest at least these limitations of independent claims 1 and 17.

Hurt fails to disclose or suggest all of the limitations of independent claims 1 and 17 and their corresponding dependent claims 2, 4, 5, 7-9, 13, 14, 18, 20, and 21, and thus fails to anticipate or render obvious these claims. The anticipation rejection based on Hurt should be withdrawn for at least these reasons.

### **Claim Rejections - 35 U.S.C. §103**

Claims 12, 15, and 16 have been rejected under 35 U.S.C. §103(a) as obvious over Humphries in view of Wilcke, U.S. Patent No. 3,298,531 (Wilcke). Wilcke discloses another type of *wall mounted* long handle tool storage rack including both an elongate upper holder 10 that is secured to a wall surface and a retaining member 55 that is positioned on the floor adjacent to the wall. The retaining member includes semi-spherical pockets 65 recessed into the upper surface 58 of the retaining member 55. Because these *pockets are semi-spherical*, it is inherent that the lowest point of these pockets is at the direct center of the pockets. Thus, the surface of the pockets 65 will not affect tool orientation or tilt. Further, because the upper holder 10 is secured to a wall surface, similar to the Hurt device, it will not tip over regardless of how the holder is loaded. Humphries discloses a flat secondary plate 60 beneath the openings 64, 66 in its lower plate 54. The flat secondary plate is not angled in a way that affects handle end location.

In contrast, claim 12 recites that the blind end surfaces of the receptacles are angled to urge an end of a tool handle received therein *toward a desired side of the receptacle* to cause the long handle tool to tilt in order to at least partly counteract the tipping moment. The recited angled surface of the receptacle urges the handle to a desired side of receptacle, not the center. Wilcke's semi-spherical surfaces of the pockets 65 are not angled, and do not urge a tool handle in any direction except to the very center of the pocket. Thus, the spherical surfaces of the pockets 65 will not affect a tilt of a tool handle as required of claim 12. The Humphries plate 60 also does not impart any tilt in long handle tools stored in its cart.

In Wilcke, it is the relationship between the openings 42 and 45 in the upper holder 10 relative to one another and relative to a position of the pockets 65 that causes the tools to lean

*forward*. Further, the forward lean of the tools in Wilcke would actually create a greater tipping moment on the device, *but for the fact that the Wilcke holder 10 is secured to a wall*. The tilt, even though not even created at all by the shape of the semi-spherical surface of the pockets 65, would not partly counteract a tipping moment as recited in claim 12, and instead would actually add to any tipping moment.

Humphries also fails to teach or suggest these same limitations recited in claim 12. Thus, a combination of Humphries and Wilcke fails to teach or suggest all of the above limitations of claim 12, which depends from claim 11 which further depends from claim 1. As a result, claim 12 is not rendered obvious by the combination of Wilcke and Humphries.

Claim 15 similarly recites that the receptacles in the base panel terminate at blind end surfaces. These blind end surfaces are recited as being angled to urge an end of a tool handle received therein toward a side of the receptacles nearest the base panel front facing portion to cause the long handle tool to lean toward the opposite rear corner portion in order to partly counteract the tipping moment. As discussed above, any combination of Wilcke and Humphries fails to teach or suggest such an angled surface that would urge a long handled tool to lean in any direction, much less toward an opposite rear corner of a triangular device. To the contrary, any combination of Wilcke and Humphries will result in a device that causes long handled tools to lean forward toward a front surface based on positioning of the openings and receptacles, as expressly disclosed and taught by Wilcke. Further, any combination of Wilcke and Humphries fails to disclose the panels being triangular as recited in intervening claim 13. The combination of Wilcke and Humphries would teach away from the device as recited in claim 15.

The combination of Humphries and Wilcke fails to teach or suggest all of the limitations of claim 15. Thus, claim 15 is not obvious in view of these references.

Claim 16 is dependent upon rejected base claim 1 which is believed to allowable as discussed above. For the same reasons set forth with respect to claim 1, claim 16 is also in condition for allowance.

Further, there is no motivation or suggestion found within either of the Wilcke or Humphries references that would lead one having ordinary skill in the art to combine them as proposed in the action. Specifically, Humphries discloses a free standing wheeled garden tool cart that can be pushed around on its wheels. The base plate or panel does not rest on the ground, but instead is elevated above the ground by the wheels and the forward extending

feet. Wilcke discloses a holder with one element 55 resting on the ground and another element 10 permanently secured to a wall. Neither part is to be moved around. The holder 10 and the ground element are also not even secured or otherwise attached to one another.

Combining the teachings of Wilcke into Humphries would require securing the upper plate in Humphries to a wall surface as taught by Wilcke, thus eliminating the express teachings of the cart being movable on its wheels. Further, combining the teachings of Wilcke with those of Humphries would require that the base be resting directly on a ground surface, again destroying the express teachings of Humphries that its bottom plate be supported on wheels above the ground for rolling the cart around. If Wilcke were used to modify Humphries and the movable nature of Humphries were retained, specific teachings of Wilcke would be destroyed. Wilcke requires its upper holder 10 be secured to a wall. Any motivation or suggestion found anywhere to combine these two references is solely based on improper hindsight using the applicants claims as a blue print. This is improper. Thus, for at least this additional reason, any rejections based on the combination of Humphries and Wilcke should be withdrawn.

Lastly, claim 24 has been rejected as obvious over Hurt in view of Schier et al., U.S. Patent No. 5,833,250 (Schier). Claim 24 recites that the front end of the base panel extends further forward than the front end of the upper panel. The action points to Figure 2 of Schier as allegedly disclosing this limitation. However, since the base panel and its one end 36 is elevated above a ground surface, this panel would have absolutely no effect on negating a moment to counteract any tipping moment in the device. Only the wheels of Schier are resting on the ground. Thus, regardless of the size of Schier's bottom panel one end 36, it would have little effect on any tipping moment because it does not touch the ground. If the one end 36 were heavy and/or loaded with heavy objects, the tipping moment on the cart would actually increase because it extends beyond the wheels and is elevated.

Claim 24 depends from claim 21 which specifically recites that the front end of the base panel defines a moment negating portion that extends sufficiently forward relative to nearest ones of tool handle receptacles to counteract at least part of the tipping moment. This is simply not the case in Schier. A combination of Schier and Hurt fails to teach or suggest all of the limitations of claim 24 and, thus, is not rendered obvious.

Further, there is no motivation or suggestion found within the prior art that would lead one having ordinary skill in the art to combine the teachings of Schier and Hurt. Similar to



the previous reference combination, Schier teaches a garden cart that is free standing and movable on wheels. In contrast, Hurt discloses and specifically claims a device that is intended to and must be secured to a wall in order to function. Any modification of Hurt based on the teachings of Schier would require replacing one of the storage devices 10 in Hurt with one that is supported on wheels and movable as taught by Schier. This would destroy the express teachings of Hurt that its devices to be secured to a wall. If one were to retain the teachings of Hurt that the devices be fixed to a wall, this would destroy the express teachings of Schier that requires the garden cart to be rollable on wheels.

Further, Hurt specifically teaches only one storage device configuration and further teaches that two or more identical ones of these devices can be used in concert with one another and connected vertically by posts. Modifying Hurt in view of the bottom panel of Schier would destroy the express teaching in Hurt that identical storage devices 10 be used to form a tiered system.

The rejection based on a combination of Hurt and Schier is improper for lacking motivation or suggestion to combine the reference teachings as proposed. Thus, the rejections should be withdrawn for at least this additional reason.

#### **Allowable Subject Matter**

The applicants greatly acknowledge that claim 19 is allowable. Dependent claim 19 has been amended herein as an independent claim including all of the limitations of the base and intervening claims. Claim 19 is believed to be in condition for allowance as amended.

#### **CONCLUSION**

Claims 1-5, 7-9, and 11-24 are in condition for allowance in view of the foregoing amendments and the following remarks. Reconsideration and withdrawal of the various objections and rejections are hereby respectfully solicited. Withdrawn claims 3, 22, and 23 read on Species II and should be reinstated. Withdrawn claims 6 and 10 depend from an allowable base claim and should now also be reinstated.

The examiner is invited to contact the undersigned at the telephone number listed below in order to discuss any remaining issues or matters of form that will place this case in condition for allowance.

No fee is believed due at this time. However, the Commissioner is hereby authorized to charge any fee deficiency, or to credit any overpayments, to Deposit Account No. 13-2855 of the undersigned's firm.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Bryan J. Lempia", is written over a horizontal line.

Bryan J. Lempia

Reg. No. 39,746

MARSHALL, GERSTEIN & BORUN LLP

233 S. Wacker Dr.

6300 Sears Tower

Chicago, Illinois 60606

(312) 474-6300

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### **DRAWINGS CORRECTIONS**

Proposed corrected drawing Figures 1-7 are submitted herewith showing changes in red ink. Discussion of the changes is provided in the remarks section of this paper.